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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 Joseph Perez,

5 Plaintiff

6 v.

7 Internal Revenue Service, et al.,

8 Defendants

Case No. 2:23-cv-00215-CDS-EJY

Order Adopting Magistrate Judge's Report  
& Recommendation and Closing Case

[ECF No. 13]

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10 Pro se plaintiff Joseph Perez initiated this action by filing an application to proceed in  
11 forma pauperis (IFP) alongside his complaint. ECF Nos. 1, 1-1. After screening the complaint,  
12 United States Magistrate Judge Elayna Youchah granted Perez's IFP application but dismissed  
13 his claims with leave to amend. R&R, ECF No. 5. Perez filed his first amended complaint in  
14 compliance with the court's order. ECF No. 6. The complaint was again reviewed by Judge  
15 Youchah who recommended Perez be granted leave to file a second amended complaint because  
16 she determined that he may be able to allege sufficient facts to establish a claim against the IRS.  
17 R&R, ECF No. 9.

18 Perez was given until July 26, 2023, to file his second amended complaint. Order, ECF  
19 No. 11. The deadline passed without Perez filing a second amended complaint. Judge Youchah  
20 then ordered Perez to show cause why this matter should not be dismissed for failure to file a  
21 second amended complaint. Order, ECF No. 12. Perez was advised that failure to comply with  
22 the order would result in a recommendation that the action be dismissed. *Id.* After the deadline  
23 passed and Perez had not complied, Judge Youchah issued an R&R recommending that this case  
24 be dismissed without prejudice. R&R, ECF No. 13. Perez did not object to the R&R before the  
25 deadline. *See* 28 U.S.C. § 636(b)(1); LR IA 3-1(a) (stating that parties wishing to object to the  
26 R&R must file objections within fourteen days). Although I am not required to review Judge

1 Youchah's R&R,<sup>1</sup> I nonetheless conduct a de novo review and agree with her findings. While  
 2 dismissal is a drastic sanction, I find that it is appropriate here.

### 3 I. Discussion

4 "Dismissal is a harsh penalty and is to be imposed only in extreme circumstances."  
 5 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). However, a court may dismiss an action  
 6 based on a party's failure to obey a court order or comply with local rules. *Malone v. U.S. Postal*  
 7 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In  
 8 determining whether to dismiss an action on this ground, the court must balance five factors: (1)  
 9 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
 10 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
 11 cases on their merits; and (5) the availability of less drastic alternatives. *Thompson, v. Hous. Auth. Of*  
 12 *City of Los Angeles*, 782 F.2d 829, 832 (9th Cir 1986).

13 The first two dismissal factors, the public's interest in expeditious resolution of litigation  
 14 and the court's need to manage its docket favor dismissal for the same reasons. The court has an  
 15 interest in moving the litigation forward, but Perez's noncompliance greatly impedes its  
 16 resolution and results in congestion of the court's docket. This case cannot proceed without an  
 17 operative pleading, and Perez has failed or refused to interact with the court for almost six  
 18 months now. This is not an efficient use of judicial resources; the court continues to effectively  
 19 controlling its docket yet Perez refuses to take action. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642  
 20 (9th Cir. 2002) (finding that plaintiff's failure to pursue the case for almost four months  
 21 weighed in favor of dismissal).

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 25 <sup>1</sup> "[N]o review is required of a magistrate judge's report and recommendation unless objections are filed."  
 26 *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see United States v. Reyna-Tapia*, 328 F.3d 1114,  
 1121 (9th Cir. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 149–150 (1985).

1 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal. “[T]he  
2 risk of prejudice to the defendant is related to the plaintiff’s reason for defaulting in failing to  
3 timely amend.” *Yourish v. California Amplifier*, 191 F.3d 983, 991 (9th Cir. 1999). “Whether prejudice  
4 is sufficient to support an order of dismissal is in part judged with reference to the strength of  
5 the plaintiff’s excuse for the default.” *Malone*, 833 F.2d at 131. Here, as noted above, there is no  
6 operative complaint to be served to defendants. Perez has not explained his failure to prosecute  
7 his claims and continues to disregard Judge Youchah’s order to show cause. Given the length of  
8 this almost six-month delay and the absence of explanation for it, Perez’s delay in prosecuting is  
9 unreasonable and creates a prejudice. *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994) (“[T]he failure  
10 to prosecute diligently is sufficient by itself to justify dismissal . . . [t]he law presumes injury  
11 from unreasonable delay.”) (quoting *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976)).

12 The fourth factor weighs against dismissal because public policy favors disposition of  
13 cases on their merits. *Pagtalunan*, 291 F.3d at 643. But its weight is significantly diminished by the  
14 fact that Perez’s failure to comply with court orders impedes this case from moving toward  
15 disposition on the merits. *See Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir.  
16 1991) (“Although there is indeed a policy favoring disposition on the merits, it is the  
17 responsibility of the moving party to move towards that disposition at a reasonable pace, and to  
18 refrain from dilatory and evasive tactics.”); *see also Morales v. City of Fresno*, 2006 WL 2085036, at  
19 \*2 (E.D. Cal. July 25, 2006) (“Public policy favoring disposition of cases on their merits also has  
20 little or no weight in actions where plaintiffs lack enough of an interest to file an amended  
21 complaint. The public and the court have no interest in determining the truth or falsity of the  
22 allegations that [p]laintiffs might raise in an amended complaint if [p]laintiffs never file an  
23 amended complaint.”).

24 While the fifth factor requires the court to consider whether less drastic alternatives can  
25 be used to correct the party’s failure that effectuated the court’s need to consider dismissal,  
26 courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but

1 must explore possible and meaningful alternatives.” *Henderson*, 779 F.2d at 1424. Here, the court  
2 considered and implemented less drastic alternatives prior to this order. Perez was repeatedly  
3 warned that dismissal would follow his failure to timely comply with orders. See ECF Nos. 5, 9,  
4 and 12. But, aware of the consequences, he nonetheless failed to comply. And given Perez’s IFP  
5 application, it appears that imposing a monetary sanction is of little use. I could enter another  
6 order setting another deadline for Perez to file his second amended complaint—but giving Perez  
7 an additional 30 days will only delay the inevitable and further squander the court’s finite  
8 resources as it appears Perez lost interest in his own lawsuit. In considering other meaningful  
9 alternatives, I am stopping short of using the harshest possible sanction of dismissal with  
10 prejudice and instead dismiss without prejudice. In sum, the five-factor analysis supports  
11 dismissal because Perez has abandoned his claims. I am left with no choice but to dismiss this  
12 action.

13 **II. Conclusion**

14 IT IS THEREFORE ORDERED that Magistrate Judge Youchah’s report and  
15 recommendation [ECF No. 13] is ADOPTED in its entirety.

16 IT IS FURTHER ORDERED that this action is DISMISSED without prejudice based on  
17 the defendant’s failure to comply with the court’s orders.

18 The Clerk of Court is kindly directed to enter judgment accordingly and close this case.

19 DATED: December 13, 2023

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21   
22 Cristina D. Silva  
23 United States District Judge  
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